



# Workshop Meeting A G E N D A

## IMPERIAL BEACH CITY COUNCIL REDEVELOPMENT AGENCY PLANNING COMMISSION PUBLIC FINANCING AUTHORITY



**APRIL 8, 2009 – 6:00 P.M.**

**Council Chambers  
825 Imperial Beach Boulevard  
Imperial Beach, CA 91932**

**THE CITY COUNCIL ALSO SITS AS THE CITY OF IMPERIAL BEACH REDEVELOPMENT AGENCY, PLANNING COMMISSION, AND PUBLIC FINANCING AUTHORITY.**

The City of Imperial Beach is endeavoring to be in total compliance with the Americans with Disabilities Act (ADA). If you require assistance or auxiliary aids in order to participate at City Council meetings, please contact the City Clerk's Office at (619) 423-8301, as far in advance of the meeting as possible.

### **CALL TO ORDER BY MAYOR**

### **ROLL CALL BY CITY CLERK**

**PUBLIC COMMENT** - *Each person wishing to address the City Council regarding items not on the posted agenda may do so at this time. In accordance with State law, Council may not take action on an item not scheduled on the agenda. If appropriate, the item will be referred to the City Manager or placed on a future agenda.*

### **REPORTS**

#### **1. PRESENTATION AND DISCUSSION REGARDING THE PROCESS TO CONSIDER PLACING A TAX MEASURE ON THE BALLOT. ( 0430-05)**

City Manager's Recommendation: Direct staff to come back with an agreement to hire a professional tax measure consultant and polling firm to explore the feasibility of placing a tax measure on the ballot.

### **ADJOURNMENT**

Copies of this notice were provided on 04-03-09 to the San Diego Union-Tribune, I.B. Eagle & Times, I.B. Sun.

AFFIDAVIT OF POSTING)  
STATE OF CALIFORNIA)  
CITY OF IMPERIAL BEACH)

I, Jacqueline M. Hald, City Clerk of the City of Imperial Beach, hereby certify that the Agenda for the Workshop Meeting as called by the City Council, Redevelopment Agency, and Public Financing Authority of Imperial Beach was provided and posted on April 3, 2009. Said meeting to be held at 6:00 p.m., April 8, 2009, the Council Chambers, 825 Imperial Beach Boulevard, Imperial Beach, California. Said notice was posted at the entrance to the City Council Chambers on April 3, 2009 at 11:00 a.m.

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Jacqueline M. Hald, CMC  
City Clerk

**Any writings or documents provided to a majority of the City Council/RDA/Planning Commission/Public Financing Authority regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.**



**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** GARY BROWN, CITY MANAGER

**MEETING DATE:** APRIL 8, 2009

**ORIGINATING DEPT.:** TOM RITTER, ASSISTANT CITY MANAGER *TR*

**SUBJECT:** PRESENTATION AND DISCUSSION REGARDING THE  
PROCESS TO CONSIDER PLACING A TAX MEASURE ON  
THE BALLOT

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**BACKGROUND:**

During your Strategic Planning Workshop in January of this year Council expressed an interest in reviewing more closely budget projections and laws about special and general elections in regards to a possible tax measure. On February 10, 2009 Council held a Workshop to discuss the budget, cost saving and revenue ideas, election rules and schedules, and the use of consultants in the tax measure process. At that time Council requested that they receive a presentation from a consultant that specializes in the tax measure process. Staff has arranged for Bonnie Moss, Executive Vice President of Tramutola LLC to make a presentation and answer Council questions regarding the tax measure process. In addition, Tim McLarney, President of True North Research, Inc. will be on hand to discuss how polling can assist cities in the decision making process.

**DISCUSSION:**

There are several questions Council will want to answer before proceeding with a tax measure – first and foremost of those being, is it needed? In staff's opinion the current level of service provided to the community is not sustainable. Our proposed two year budget is precariously balanced assuming the "status quo" with no labor adjustments. Our City has one of the leanest staffing ratios and lowest level of general fund revenue on a per capita basis in the County. As a built out bedroom community with limited commercial districts we have few opportunities to increase our sale tax revenue. Creating more hotel rooms to increase transient occupancy tax (TOT) revenues continues to be an elusive goal. Even with completion of significant redevelopment projects in our City we will still need to develop other sources of revenue (or expenditure reductions) to continue our current level of services.

General fund revenues are primarily dedicated to public safety programs, parks, recreation, seniors, facility maintenance, finance, and administration. To save the \$1 million dollars that may be needed to balance the budget in as little as 3-4 years it would require the elimination of approximately 17 full-time positions (24%) and 8 part-time positions along with several programs in their entirety. This would result in the closing of facilities and dramatic service cuts to the public.

As an alternative to service reductions the Council should consider placing a utility users tax (UUT) or parcel tax on the ballot. It is estimated that a 5% UUT or a \$200 per year parcel tax would raise approximately \$1 million dollars in revenue per year. A UUT would require a majority vote to pass while a parcel tax requires a 2/3 vote. If a fiscal emergency is declared (which needs 100% Council support) either of these two options could be on a mailed in ballot in March 2010.

If the Council does wish to consider placing a tax measure on the ballot it would be advisable to begin the process in the very near future. This will allow staff and Council the time to hire a consultant and polling firm to assist the City in determining if a tax measure is a feasible option. No matter what course of action the Council decides it will be important to include the community in the process.

**ENVIRONMENTAL IMPACT**

Not a project as defined by CEQA.

**FISCAL IMPACT:**

No fiscal impact at this time.

**DEPARTMENT RECOMMENDATION:**

Direct staff to come back with an agreement to hire a professional tax measure consultant and polling firm to explore the feasibility of placing a tax measure on the ballot.

**CITY MANAGER'S RECOMMENDATION:**

Approve Department recommendation.



Gary R. Brown, City Manager

**Attachments:**

1. Survey of SD County Cities on FTE's per 1,000 residents
2. Previous actions taken by City of IB to reduce costs or generate revenues
3. Survey of how much of City's GF goes to pensions
4. Description of services provided by tax measure and polling consultants
5. Timeline for March 2, 2010 mailed ballot election
6. Timeline for June 8, 2010 election
7. Timeline for November 2, 2010 election
8. Overview of City revenues and revenue options
9. City Attorney Memorandum on ballot measure tax elections

Survey of San Diego County Cities  
March 2009

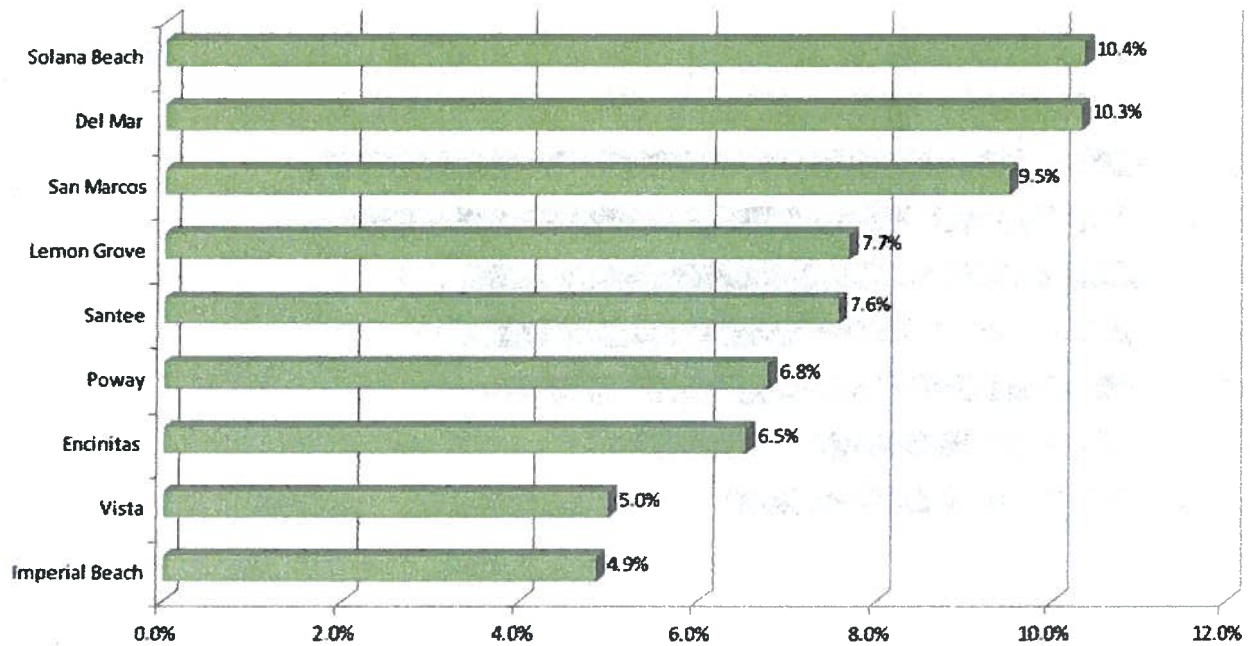
City	Population	Budgeted FTE's	Services Include	FTE's Per 1,000 Residents
Del Mar	4,580	55	Neither	12.01
Coronado	23,101	225	Police/library	9.74
San Diego	1,336,865	10,575	Police/library	7.91
Carlsbad	103,811	714.25	Police/library	6.88
National City	61,194	388	Police/library	6.34
Oceanside	178,806	1060	Police/library	5.93
Solana Beach	13,500	69.49	Neither	5.15
Escondido	143,389	700.1	Police/library	4.88
El Cajon	97,934	478	Police	4.88
Chula Vista	231,305	1,109	Police/library	4.79
Poway	51,103	244	Neither	4.77
La Mesa	56,666	270.35	Police	4.77
Encinitas	63,864	240.8	Neither	3.77
Vista	95,770	347	Neither	3.62
San Marcos	82,743	235	Neither	2.84
Lemon Grove	25,611	72.18	Neither	2.82
Imperial Beach	28,200	72	Neither	2.55
Santee	56,068	132.4	Neither	2.36

City of Imperial Beach  
Previous Actions Taken to Reduce Costs or Generate Revenue  
As of April 2009

Annual Estimate	Action Taken
\$91,000	Staff reductions in Fire
\$52,300	Staff reductions in Finance
\$15,000	Staff Reductions in City Manager Office
\$9,500	Staff Recductions in Senior Center
\$600,000	Conservative labor negotiations
\$500,000	No miscellaneous salary increases in FY 05-06 & 06-07
\$500,000	Greater use of Redevelopment funds for services
\$500,000	Master Fee Study fee increases
\$140,000	AMR reimbursement for paramedic services
\$28,000	AMR rent of fire station space for ambulance personnel
\$68,000	Increase in parking fines
\$20,000	Reduction in public relations budget
\$8,000	Reduction in city newsletter budget
\$137,500	Sheriff increases limited to 5% (as compared to 7.5% increase)
\$50,000	Continuation of unfunded Firefighter/Paramedic position
\$500,000	Storm water fee
\$450,000	Workers compensation self insurance
\$200,000	Favorable risk management workers/comp claims history
\$500,000	Activity Based Costing
\$70,000	Enforce business license requirement on rental properties
\$75,000	Staff Reduction in Sheriff Department (School Resource Officer)
\$155,000	Staff Reduction in Sheriff Department (Motor Officer)
\$224,000	Interest on General Fund loan to Redevelopment Agency
\$4,893,300	TOTAL per year

## How Much of your City's General Fund Goes to Pensions?

Cities without their own police force.  
(These cities contract with the County for Sheriff's services)



Election consultants recommend a 6 – 12 month lead time to properly assess the viability of placing a tax measure on the ballot. A Feasibility Assessment will take approximately 3 months and cost approximately \$40K (\$20K consultant + \$20K polling firm) and include the following:

- A demographic assessment of the city's unique universe of voters.
- A strategic evaluation of recent local elections.
- A review of the city's needs and any existing plan options to address them.
- Review and assessment of the city's existing public communications efforts.
- Obtain input from City staff, Council members, community groups and citizens.
- Develop potential ballot language to test with independent polling firm.
- Interpretation of public opinion research (provided by polling firm of City's choice) to understand current voter perceptions of City's issues and needs.
- Recommendations for moving forward—including a candid assessment on current levels of support for the City and what it will take to position the City for future success.
- Develop timeline on recommended next steps.

The Feasibility Phase could lead to three possible scenarios:

1. Most positive – The City enjoys strong support within the community and should move forward without delay on a ballot measure.
2. Positive – The City enjoys some support but greater public awareness prior to any measure being placed on the ballot is necessary.
3. Negative – The public support needed for a successful ballot measure does not exist and alternatives must be explored in order to gain public support prior to considering a tax increase on the ballot.

If the Feasibility Assessment is positive the Council could choose to proceed with the Pre-Electoral Strategic Planning and Public Information Phase (up to 40K Consultant, 20K tracking poll, 20K public education). The Pre-Electoral Strategic Planning and Public Information Services Phase will take from 3 - 9 months and include the following:

- Review and clarification of the specific "plan" City will implement if voters approve a tax.
- Obtain input and feedback on the proposed expenditure plan from City staff, Council members, community groups and citizens as appropriate.
- Oversee development and implementation of an effective, pre-electoral public information program (non-advocacy) – including copy writing, editing, art direction, production coordination, and strategic targeting.
- Coordination of graphic designers, printers, mail houses, delivery services and other vendors.
- Work with polling consultant to coordinate tracking poll and evaluate results.
- Analysis and recommendations for placing a "winnable" measure on the ballot, including determining the best election type, optimal election date, tax rate and essential components and language of the plan.

Working with our Financial and Legal Advisors an election Consultant will also assist in:

- Refining the specific plan for how taxpayer money from your tax measure will be spent.
- Establishing an appropriate rate and structure (i.e. COLA, sunset date, etc.).
- Preparing the official Ballot Statement, Arguments, Rebuttals and other required documents.
- Reviewing resolutions prepared by Legal Counsel.
- Advising City relative to public information regarding the proposed measure, including direct mail, electronic communications and other media.

Once a measure is placed on the ballot the final phase leading up to the election must be handled by a private entity with private funding, as no public money (or resources) can be spent advocating or supporting the measure.

# PROPOSED CALENDAR OF EVENTS – INITIATIVE BY COUNCIL ACTION

Mail Ballot Election Date: March 2, 2010

(The first Tuesday after the first Monday in March of each even-numbered year)

DAYS BEFORE AN ELECTION	DATE	EVENT
305 to 105	May 1, 2009 to November 17, 2009	Feasibility Study and Strategic Planning.
104	November 18, 2009	Suggested last day for council to Adopt Resolutions for ballot measures.
88	December 7, 2009	Registrar of Voters to receive resolution(s) requesting consolidation, services, etc. Ballot text (limited to 75 words) must be included in the resolution, along with other sample ballot material (i.e., ordinance or map). (10403)
83	December 9, 2009	Last day for City Council to amend or withdraw any measure. The resolution shall be filed with the election official no later than this date.
82	December 10, 2009	Suggested date to post or publish argument deadline notice.
78	December 14, 2009	Suggested date for city attorney to prepare impartial analysis. (9280)
76	December 16, 2009	Arguments <u>in favor of</u> OR <u>against</u> the proposition due at City Clerk's Office. (9286)
75	December 17, 2009	City Clerk to "trade" direct arguments with author from each side for preparation of rebuttals. (9404)
*69	December 23, 2009	City Clerk to publish a Notice of Election for measures to be voted on. (12111) <i>*Note: The date for publishing the notice is not specified in the Elections Code.</i>
68	December 24, 2009	Rebuttal arguments due at City Clerk's Office. (9295)
56 to 41	January 5, 2010 to January 20, 2010	Ballots typeset, proofed and printed.
40 to 21	January 21, 2010 to February 9, 2010	Between these dates sample ballots shall be mailed to registered voters. (13303)
6 to 0	February 24, 2010 to March 2, 2010	Emergency voting <i>in person</i> at the Registrar of Voters Office. (3021)
0	March 2, 2010	ELECTION DAY
DAYS AFTER THE ELECTION	DATE	EVENT
+ 28	March 28, 2010	No later than this date, certified results will be available; after the official canvass is completed. Major elections (Primary or General of an even year, for example) may require 28 days; stand-alone or smaller elections require much less time. (15300)

## Public Review Period Set (Dates set by ROV)

State law provides for a "public review period" of all candidates' ballot occupational designations, candidates' statements of qualifications, ballot measure analysis, arguments, rebuttals and other materials before printing the Sample Ballot and Voter Information Pamphlet.

The California Elections Code further defines this review period, with a distinct period for each document filed with the Registrar of Voters.

*During this period, any voter who believes any portion of these materials to be false, misleading or inconsistent with state law may seek a writ of mandate or injunction requiring any or all of the material to be amended or deleted.*

## Ballot Arguments "in Favor of" or "Against" Local Propositions

December 17 to December 28      Arguments due by December 16

## Rebuttals to Ballot Arguments "in Favor of" or "Against" local propositions

December 25 to January 4      Rebuttals due December 24



# PROPOSED CALENDAR OF EVENTS – INITIATIVE BY COUNCIL ACTION

Election Date: June 8, 2010

(The first Tuesday after the first Monday in June in each even-numbered year)

DAYS BEFORE AN ELECTION	DATE	EVENT
311 to 112	August 1, 2009 to February 16, 2010	Feasibility Study and Strategic Planning.
111 or 97	February 17, 2010 or March 3, 2010	Suggested last day for council to Adopt Resolutions for ballot measures.
88	March 12, 2010	Registrar of Voters to receive resolution(s) requesting consolidation, services, etc. Ballot text (limited to 75 words) must be included in the resolution, along with other sample ballot material (i.e., ordinance or map). (10403)
83	March 17, 2010	Last day for City Council to amend or withdraw any measure. The resolution shall be filed with the election official no later than this date.
82	March 18, 2010	Suggested date to post or publish argument deadline notice.
78	March 22, 2010	Suggested date for city attorney to prepare impartial analysis. (9280)
76	March 24, 2010	Arguments <u>in favor of</u> OR <u>against</u> the proposition due at City Clerk's Office. (9286)
75	March 25, 2010	City Clerk to "trade" direct arguments with author from each side for preparation of rebuttals. (9404)
*69	March 31, 2010	City Clerk to publish a Notice of Election for measures to be voted on. (12111) <i>*Note: The date for publishing the notice is not specified in the Elections Code.</i>
68	April 1, 2010	Rebuttal arguments due at City Clerk's Office. (9295)
56 to 41	April 13, 2010 to April 28, 2010	Ballots typeset, proofed and printed.
40 to 21	April 29, 2010 to May 18, 2010	Between these dates sample ballots shall be mailed to registered voters. (13303)
6 to 0	June 2, 2010 to June 8, 2010	Emergency voting <i>in person</i> at the Registrar of Voters Office. (3021)
0	June 8, 2010	<b>ELECTION DAY</b> - Polls open from 7 am to 8 pm. (1000)
DAYS AFTER THE ELECTION	DATE	EVENT
+ 28	July 28, 2010	No later than this date, certified results will be available; after the official canvass is completed. Major elections (Primary or General of an even year, for example) may require 28 days; stand-alone or smaller elections require much less time. (15300)

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## Ballot Arguments "in Favor of" or "Against" Local Propositions

March 25 to April 5

Arguments due by March 24

## Rebuttals to Ballot Arguments "in Favor of" or "Against" local propositions

April 2 to April 12

Rebuttals due April 1

# PROPOSED CALENDAR OF EVENTS – INITIATIVE BY COUNCIL ACTION

Election Date: November 2, 2010

(The first Tuesday after the first Monday in November of each year)

DAYS BEFORE AN ELECTION	DATE	EVENT
274 to 105	February 1, 2010 to July 20, 2010	Feasibility Study and Strategic Planning
104	July 21, 2010	Suggested last day for council to Adopt Resolutions for ballot measures
88	August 6, 2010	Registrar of Voters to receive resolution(s) requesting consolidation, services, etc. Ballot text (limited to 75 words) must be included in the resolution, along with other sample ballot material (i.e., ordinance or map). (10403)
83	August 11, 2010	Last day for City Council to amend or withdraw any measure. The resolution shall be filed with the election official no later than this date.
82	August 12, 2010	Suggested date to post or publish argument deadline notice.
78	August 16, 2010	Suggested date for city attorney to prepare impartial analysis. (9280)
76	August 18, 2010	Arguments <u>in favor of</u> OR <u>against</u> the proposition due at City Clerk's Office. (9286)
75	August 19, 2010	City Clerk to "trade" direct arguments with author from each side for preparation of rebuttals. (9404)
*69	August 25, 2010	City Clerk to publish a Notice of Election for measures to be voted on. (12111) <i>*Note: The date for publishing the notice is not specified in the Elections Code.</i>
68	August 26, 2010	Rebuttal arguments due at City Clerk's Office. (9295)
56 to 41	September 7, 2010 to September 22, 2010	Ballots typeset, proofed and printed.
40 to 21	September 23, 2010 to October 12, 2010	Between these dates sample ballots shall be mailed to registered voters. (13303)
6 to 0	October 27, 2010 to November 2, 2010	Emergency voting <i>in person</i> at the Registrar of Voters Office. (3021)
0	November 2, 2010	<b>ELECTION DAY</b> - Polls open from 7 am to 8 pm. (1000)
DAYS AFTER THE ELECTION	DATE	EVENT
+ 28	November 30, 2010	No later than this date, certified results will be available; after the official canvass is completed. Major elections (Primary or General of an even year, for example) may require 28 days; stand-alone or smaller elections require much less time. (15300)

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## Ballot Arguments "in Favor of" or "Against" Local Propositions

August 19 to August 30

Arguments due by August 18

## Rebuttals to Ballot Arguments "in Favor of" or "Against" local propositions

August 27 to September 6

Rebuttals due August 26

# Revenue Overview

City Council Workshop  
February 2009

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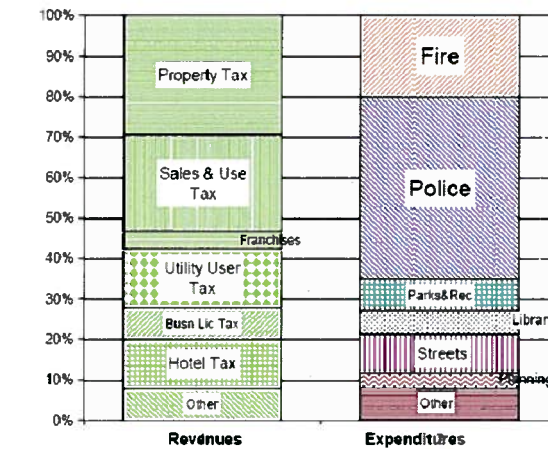
## Topics

- General Fund Revenues
  - Structural Issues with Property Taxes
  - Sales Tax: Nearly the lowest per capita in the State
  - Transient Occupancy Tax stagnant
- 5 Year Forecast
  - Magnitude of Deficits
- Revenue Options

2

## Typical City

### Discretionary Revenues and Spending Typical Full Service City

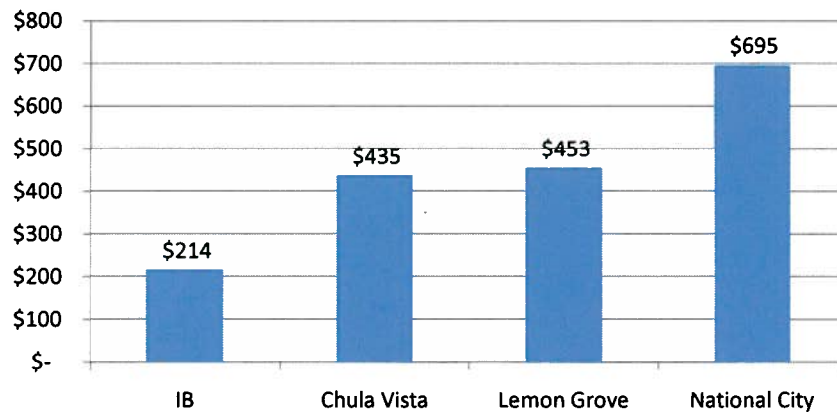


SOURCE: Coleman Advisory Service computations from State Controller data as reported by cities.

3

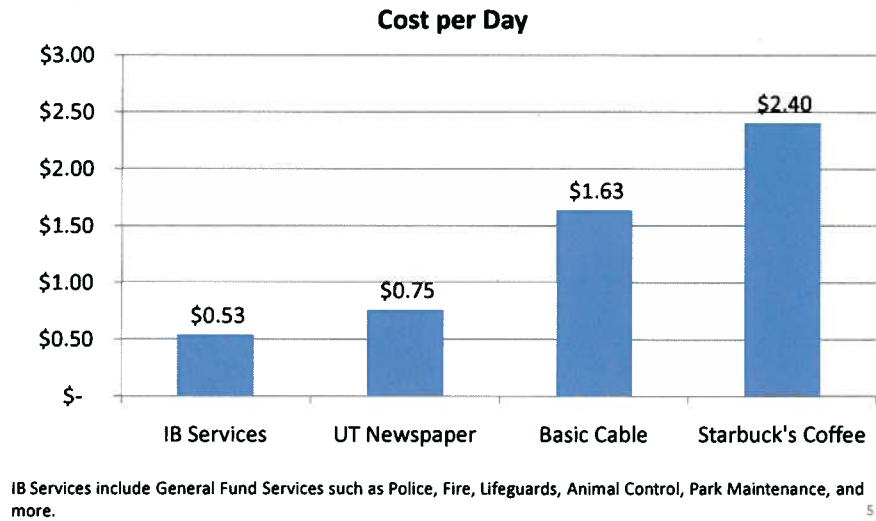
## Limited Revenue: Tax Comparisons to Other Cities

### General Fund Taxes per Capita per Year

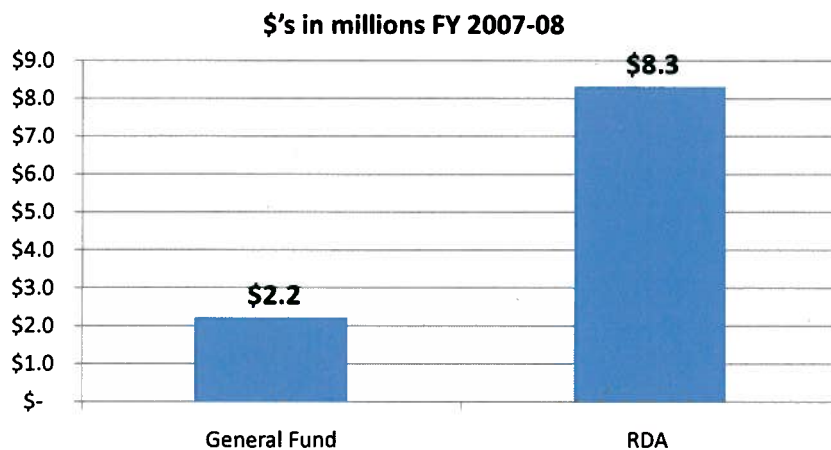


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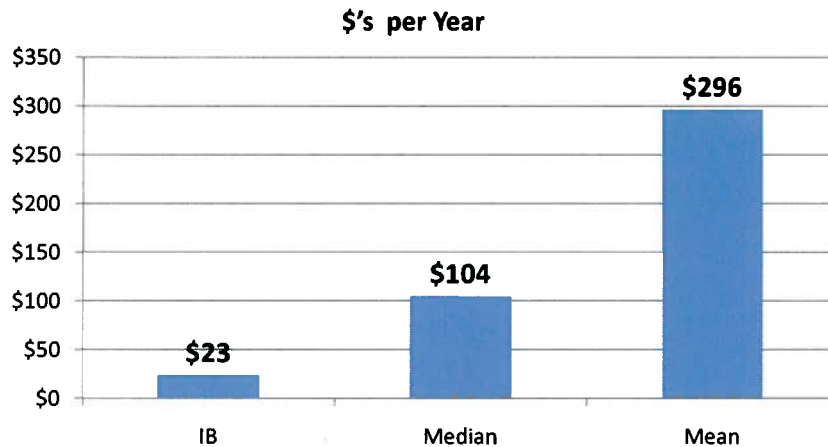
## Cost Comparison of a IB Resident's City Services



## Property Tax Distribution



## Way Below Average Sales Tax per Capita



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## Tax Revenues Lagging

	Tax Revenue	% of Total Taxes	
Base Property Tax	\$1.8	31%	Frozen, will not grow
Sales Tax	\$1.0	17%	Has not grown since FY 2004-05
T.O Tax	\$0.3	5%	Has not grown since FY 2004-05
Subtotal	<b>\$3.1</b>	<b>53%</b>	
VLF In Lieu	\$2.1	36%	Growth tied to Assessed Value
Tax Incr. Pass Thru	\$0.4	7%	Growth tied to Assessed Value
All Other Taxes	\$0.3	5%	
Total Tax Revenue	<b>\$5.9</b>	<b>100%</b>	

- Half of the Tax Revenues have not grown
- Remaining Tax Revenues tied to Assessed Value growth

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## 5 Year Projection July 2008

	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>
<b>Revenues</b>	<b>\$ 16.0</b>	<b>\$ 16.3</b>	<b>\$ 16.6</b>	<b>\$ 16.9</b>	<b>\$ 17.3</b>
<b>Expenses</b>	<b>\$ 15.9</b>	<b>\$ 16.0</b>	<b>\$ 16.7</b>	<b>\$ 17.5</b>	<b>\$ 18.2</b>
<b>Net</b>	<b>\$ 0.1</b>	<b>\$ 0.3</b>	<b>\$ (0.1)</b>	<b>\$ (0.6)</b>	<b>\$ (0.9)</b>

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## What Equals \$1 million?

- All of Park Maintenance, Recreation, Sr. Center, Code Enforcement, Abandon Vehicle, Animal Control, Disaster Prep, and \$20,000 more
- All of Mayor/Council, City Clerks, City Manager, Personnel, City Attorney, and half of Finance Department
- Reduce fire house staff to 1 firefighter
- Nearly double all city fees

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## Revenue Options

- Utility Users Tax
- Parcel Tax
- Other

11

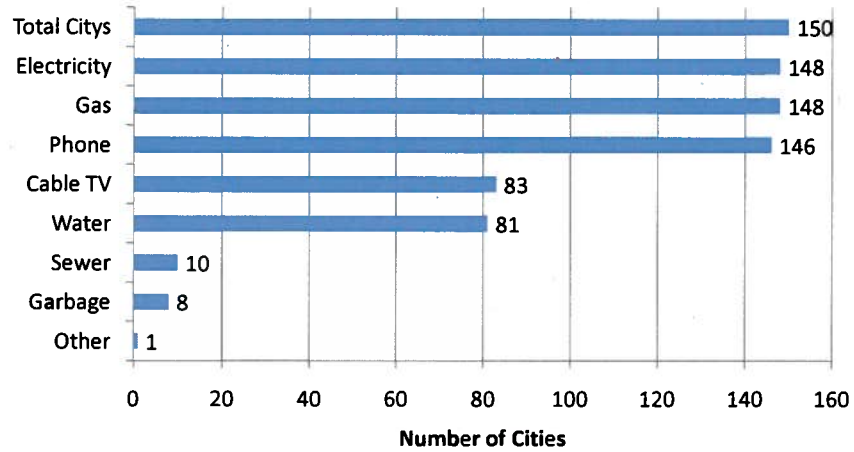
## Utility User Tax

- May be imposed on the consumption of various utility services for both residents and businesses
- Subject to Prop 218 requirements
- Approximately half of the state's population is subject to an Utility User Tax
- Rates vary from 1% to 11% with 5.5% being the mean
- On average UUT provides 15% of general purpose revenue
- Low City administration costs

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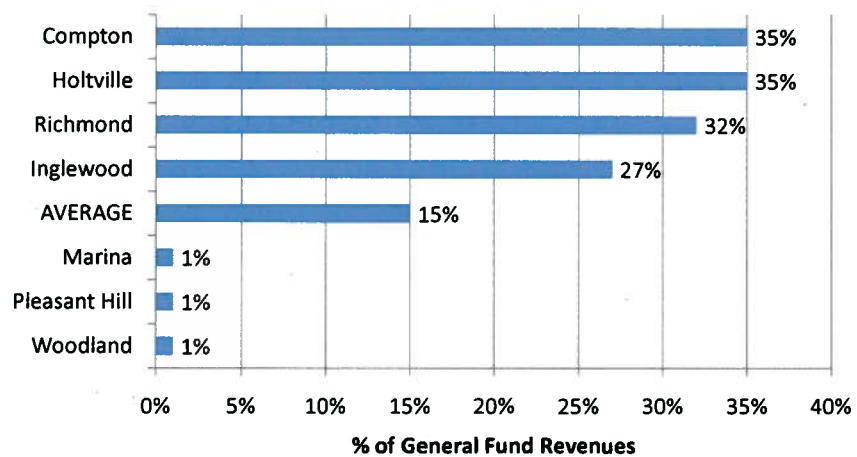


## Breakdown of Utility User Tax Components



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## UUT as a % of General Fund Revenues



14

## Projected UUT Revenue at Various Rates and Services

	Tax Rate					
	5%	6%	7%	8%	9%	10%
<b>Gas &amp; Electric</b>	392,280	470,736	549,192	627,648	706,104	784,560
<b>Telephone</b>	98,070	117,684	137,298	156,912	176,526	196,140
<b>Wireless</b>	140,100	168,120	196,140	224,160	252,180	280,200
<b>Subtotal</b>	<b>630,450</b>	<b>756,540</b>	<b>882,630</b>	<b>1,008,720</b>	<b>1,134,810</b>	<b>1,260,900</b>
<b>Cable TV</b>	274,596	329,515	384,434	439,354	494,273	549,192
<b>Water</b>	179,328	215,194	251,059	286,925	322,790	358,656
<b>Sewer</b>	63,979	76,775	89,571	102,366	115,162	127,958
<b>Garbage</b>	140,100	168,120	196,140	224,160	252,180	280,200
<b>Total</b>	<b>1,288,453</b>	<b>1,546,144</b>	<b>1,803,834</b>	<b>2,061,525</b>	<b>2,319,215</b>	<b>2,576,906</b>

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## Cost Per Household Per Month

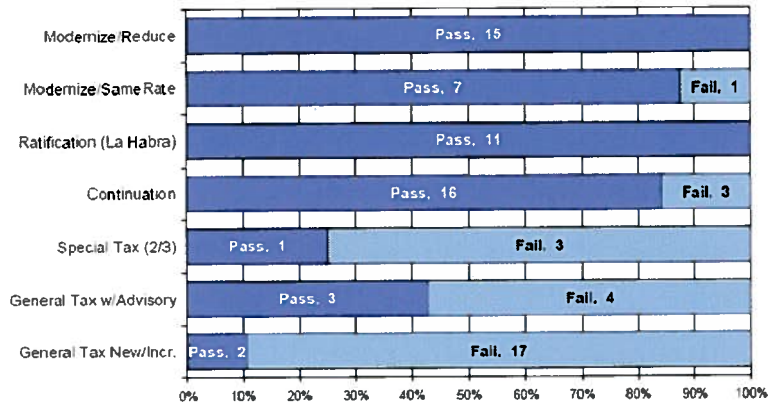
	Tax Rate					
	5%	6%	7%	8%	9%	10%
<b>Gas &amp; Electric</b>	\$3.50	\$4.20	\$4.90	\$5.60	\$6.30	\$7.00
<b>Telephone</b>	\$0.88	\$1.05	\$1.23	\$1.40	\$1.58	\$1.75
<b>Wireless</b>	\$1.25	\$1.50	\$1.75	\$2.00	\$2.25	\$2.50
<b>Subtotal</b>	<b>\$5.63</b>	<b>\$6.75</b>	<b>\$7.88</b>	<b>\$9.00</b>	<b>\$10.13</b>	<b>\$11.25</b>
<b>Cable TV</b>	\$2.45	\$2.94	\$3.43	\$3.92	\$4.41	\$4.90
<b>Water</b>	\$1.60	\$1.92	\$2.24	\$2.56	\$2.88	\$3.20
<b>Sewer</b>	\$0.57	\$0.69	\$0.80	\$0.91	\$1.03	\$1.14
<b>Garbage</b>	\$1.25	\$1.50	\$1.75	\$2.00	\$2.25	\$2.50
<b>Total</b>	<b>\$11.50</b>	<b>\$13.80</b>	<b>\$16.09</b>	<b>\$18.39</b>	<b>\$20.69</b>	<b>\$22.99</b>

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## UUT Measures

### Utility User Tax Measures: June2002-June2008

Cities and Counties



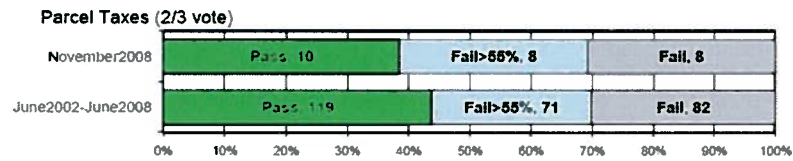
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## Projected Parcel Tax Revenue at Various Costs per Year

	\$ 50	\$ 100	\$ 150	\$ 200	\$ 250	\$ 300
Parcel Tax	276,250	552,500	828,750	1,105,000	1,381,250	1,657,500

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## Parcel Tax Vote



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**MEMORANDUM**

TO: Honorable Mayor and  
 Members of the City Council

FROM: James P. Lough, City Attorney   
 Jacqueline Hald, City Clerk

DATE: February 5, 2009

SUBJECT: Options and Procedures for the Potential Imperial Beach Financial Enhancement  
 Ballot Measure

The City has asked this office to provide some guidance to the City Council when considering options for the current fiscal crisis. This memo discusses procedures for placement of a revenue measure before the voters of the City of Imperial Beach.

Attached to this memo are two charts that outline the general procedures for placement of tax measures before the voters. The Charts deal with Special Taxes and General Taxes. Special taxes include any special purpose tax and any parcel tax. All parcel taxes must receive a two-thirds vote of the people regardless of whether they are for general or special purposes.

**UTILITY USER TAX**

A Utility Users Tax ("UUT") is a tax on gas, electricity, cable television and water service provided to residents of the City. It is based on the concept that each city must provide public access to allow utility companies to provide services to a customer. Some of these costs are reimbursed through a franchise fee and many are not. A UUT is a percentage of the applicable bill for services, is paid to the City and collected by the utility.

The imposition of a UUT requires a vote of the people under both Propositions 62 and 218. Proposition 62 sets up procedural requirements in the state statutes (Gov. Code § 53750 *et. seq.*) and Proposition 218 establishes companion procedures in the Constitution (Art. XIII C).

In the face of changing technology in the telecommunications industry and deregulation in the areas of electricity and natural gas, many public agencies are considering expanding the traditional scope of utility users taxes to enlarge the types of utility services subject to the tax. There are issues relating to the impact of the federal law on utility users tax that should be considered. The first is the Internet Tax Freedom Act (ITFA), which places a moratorium on taxation of "Internet access." The second is legislation pending in the Congress, which would place a moratorium on taxation of cell phones. The third is the elimination of the Federal Excise Tax (FET) on long distance calls that are not billed on both the bases of time and distance. (Distance is frequently excluded from nationwide "one-rate" plans). The FET was also eliminated on bundled charges for both taxable and non-taxable calls. The ITFA was to expire on November 1, 2007, but legislation extended the ban until 2014.

As a result of these new regulatory issues, any UUT ordinance must be crafted to only cover technologies that are not exempt under federal law. As telecommunications changes, the covered services in UUT ordinances can become subject to dispute. The breadth of these regulations is subject to disagreement on several points and the scope of the ordinance would have to be based on the status of the law at the time the ordinance is drafted. Some flexibility will need to be incorporated into the ordinance to allow for future regulatory changes.

## **PARCEL TAXES**

A parcel tax is usually an annual tax that is based on either a flat per-parcel rate or a rate that varies based on other factors such as parcel size, use or other physical attributes other than value. (See *Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481.) Parcel taxes based upon the value of the property are invalid as a violation of Proposition 13's limits on ad valorem property taxes. (See, Cal. Const. art. XIII A, § 1; See, generally, *City of Oakland v. Digre* (1988) 205 Cal. App. 3d 99.) Section 3 of Article XIID limits the types of taxes that can be imposed upon a parcel of property to the ad valorem property tax imposed pursuant to Article XIII and Article XIII A and any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A. This means that a parcel tax may only be imposed as a special tax. (*Nielson v. City of California City* (2006) 133 Cal. App. 4th 1296.) An agency proposing to levy a parcel tax should take note of the provisions of California Government Code section 53087.4 regarding mandatory collection of a parcel tax on the property tax bill.

## **SPECIAL OR GENERAL TAX**

Proposition 218 specifically applies to all California cities. (Cal. Const. XIII C § 1(b); Art. XIII D, § 2(a).) The California Constitution, under Proposition 218, establishes two types of taxes, general and special. (Cal. Const. Art. XIII C, § 2.) Proposition 218 defines a "general tax" as any tax imposed for general government purposes. (Cal. Const. Art. XIII C § 1(a).) A general tax, under Proposition 218, requires a majority vote of the people. Similar provisions are found

in the Government Code under Proposition 62. (Gov. Code § 53750 *et. seq.*)<sup>1</sup> Proposition 62 adds voting requirements for the City Council when adding a measure to the ballot, usually a two-thirds vote of the full council.

Proposition 218 defines a “special tax” as any tax imposed for specific purposes, including taxes imposed for specific purposes and placed into a general fund. (Cal. Const. Art XIII C §1(d).) A special tax means that a tax with an identified purpose requires a two-thirds vote of the people. (*Howard Jarvis Taxpayers Association v. City of Roseville* (2003) 106 Cal.App.4th 1178.)

### PROCEDURAL REQUIREMENTS FOR A GENERAL TAX MEASURE

Under Proposition 218, no local government may impose or increase any general tax until the electorate has approved the tax. (Cal. Const. Art. XIII C, § 2(b).) The imposition or increase of a general tax requires a majority vote of the electorate voting in an election on the tax.

A two-thirds vote of all members (four votes) of the City Council is required for general taxes under Proposition 62 (*i.e.*, General Purpose Utility Users Tax). (Government Code § 537724(b).) Under the Revenue & Tax Code, a two-thirds vote of the legislative body is required to submit it to the voters if the tax is a transaction and use tax (sales). (Rev. & Tax Code § 7285.9; Senate Bill 566, Chapter 709, (2003).)

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<sup>1</sup> 53722. No local government or district may impose any special tax unless and until such special tax is submitted to the electorate of the local government, or district and approved by a two-thirds vote of the voters voting in an election on the issue.

53723. No local government, or district, whether or not authorized to levy a property tax, may impose any general tax unless and until such general tax is submitted to the electorate of the local government, or district and approved by a majority vote of the voters voting in an election on the issue.

53724. (a) A tax subject to the vote requirements prescribed by Section 53722 or Section 53723 shall be proposed by an ordinance or resolution of the legislative body of the local government or district. The ordinance or resolution proposing such tax shall include the type of tax and rate of tax to be levied, the method of collection, the date upon which an election shall be held on the issue, and, if a special tax, the purpose or service for which its imposition is sought.

(b) No tax subject to the vote requirement prescribed by Section 53723 shall be presented at an election unless the ordinance or resolution proposing such tax is approved by a two-thirds vote of all members of the legislative body of the local government or district.

(c) Except as provided in subdivision (d), the election on any tax proposed pursuant to this Article shall be consolidated with a statewide primary election, a statewide general election, or a regularly scheduled local election at which all of the electors of the local government or district are entitled to vote.

(d) Notwithstanding subdivision (c), the legislative body of the local government or district may provide that the election on any tax proposed pursuant to this Article shall be held at any date otherwise permitted by law. The local government or district shall bear the cost of any election held pursuant to this subdivision. An election held pursuant to this subdivision shall be deemed at the request of the local government or district calling such election, and shall not be deemed a state mandate.

(e) The revenues from any special tax shall be used only for the purpose or service for which it was imposed, and for no other purpose whatsoever.

In order for a general tax to be placed before the voters, the City Council is required to schedule the matter to "be consolidated with a regularly scheduled general election for members of the governing body." The next general election for Imperial Beach officeholders is November 2010. However, a city council may set a different election date if they declare a fiscal emergency by unanimous vote of the governing body. (Cal. Const. Art. XIII C § 2(b).) Proposition 218 provides no definition of the term "emergency" which justifies the calling of the special election. However, the calling of an "emergency" would be a legislative act to which the courts tend give great deference. (*Crown Motors v. City of Redding* (1991) 232 Cal.App.3d 173, 179.)

Proposition 218 gives no specific guidance on the procedure by which the votes are taken, calling the election, and calling the emergency. If a sales tax is considered, there is separate legislation that creates a two-thirds voting requirement to call an election on a transaction and use tax. (Rev. & Tax Code § 7285.9.) However, for all other general taxes, the Government Code, under Proposition 62, is the main guiding legislation. (Government Code § 537724.)

In order to place a general tax measure on a ballot before November 2010, the City Council would have to declare a "Fiscal Emergency" by a unanimous vote. After adoption of the Fiscal Emergency Resolution, the Council could set an election for either a sales tax or a utility users tax by a two-thirds vote. With a five member Council, this requires four votes.

A utility users tax requires an ordinance that specifies the type of utilities and the types of services they provide that will be subject to the tax. A UUT is usually a percentage of the amount that is subject to the tax. The tax usually applies to water, telephone, electricity, natural gas, cable and solid waste bills. All or part of these services can be added to the tax with some exceptions for services exempted by various acts of Congress (*i.e.* Internet Services). Usually, the language is consistent with the billings practices of the utilities for a smoother administrative operation.

## **SPECIAL TAX PROCEDURE**

Under the Constitution, the City may not impose or increase any special tax until the tax has been submitted to the electorate and approved by a two-thirds vote. (Cal. Const. Art. XIII C § 2(b).) There are no timing restrictions on elections to approve special taxes. They may be called and held at special election.

If the Council is considering approving a special parcel tax, a two-thirds vote of the City Council is required before placing the matter before the voters. The parcel tax must be collected on the County property tax bill. The parcel tax legislation must conform with the collection procedures of the County Tax Collector. It also can be charged against certain categories of property (*i.e.* residential rate, commercial rate and multiple family residential rate). An example of a parcel tax was the county fire fee at the November 2008 election.



## MAILED BALLOT ELECTIONS

The Elections Code allows for elections under Article XIII C to be held by mailed ballot. (See, Elections Code section 4000(c)(8).) The Legislature has labeled these mailed ballot procedures as an "election" allowing the City Council to set a Proposition 218 tax measure on a mailed ballot election. Mailed ballot elections must be held on certain dates. As of January 1, 2005, Elections Code section 1500 establishes those dates as follows:

1500. Established mailed ballot election dates.

The established mailed ballot election dates are as follows:

- (a) The first Tuesday after the first Monday in May of each year.
- (b) The first Tuesday after the first Monday in March of each even-numbered year.
- (c) The last Tuesday in August of each year.

Under Proposition 218, the only required election dates listed deal with non-emergency general tax measures (*discussed above*). A non-emergency general tax election is required to be called on a date when council member's and/or mayor's positions are on the same ballot. There are no election date limitations on when a fiscal emergency is called. Further, there are no restrictions on when a special tax is placed before the voters requiring two-thirds vote. While there are no specific cases or attorneys-general opinions that this office is aware of on this issue, it is likely that, after the declaration of an emergency, a general tax measure could be placed on one of the required mailed ballot dates. Also, a special tax measure could be placed on a mailed ballot date based on the authority of the Elections Code.

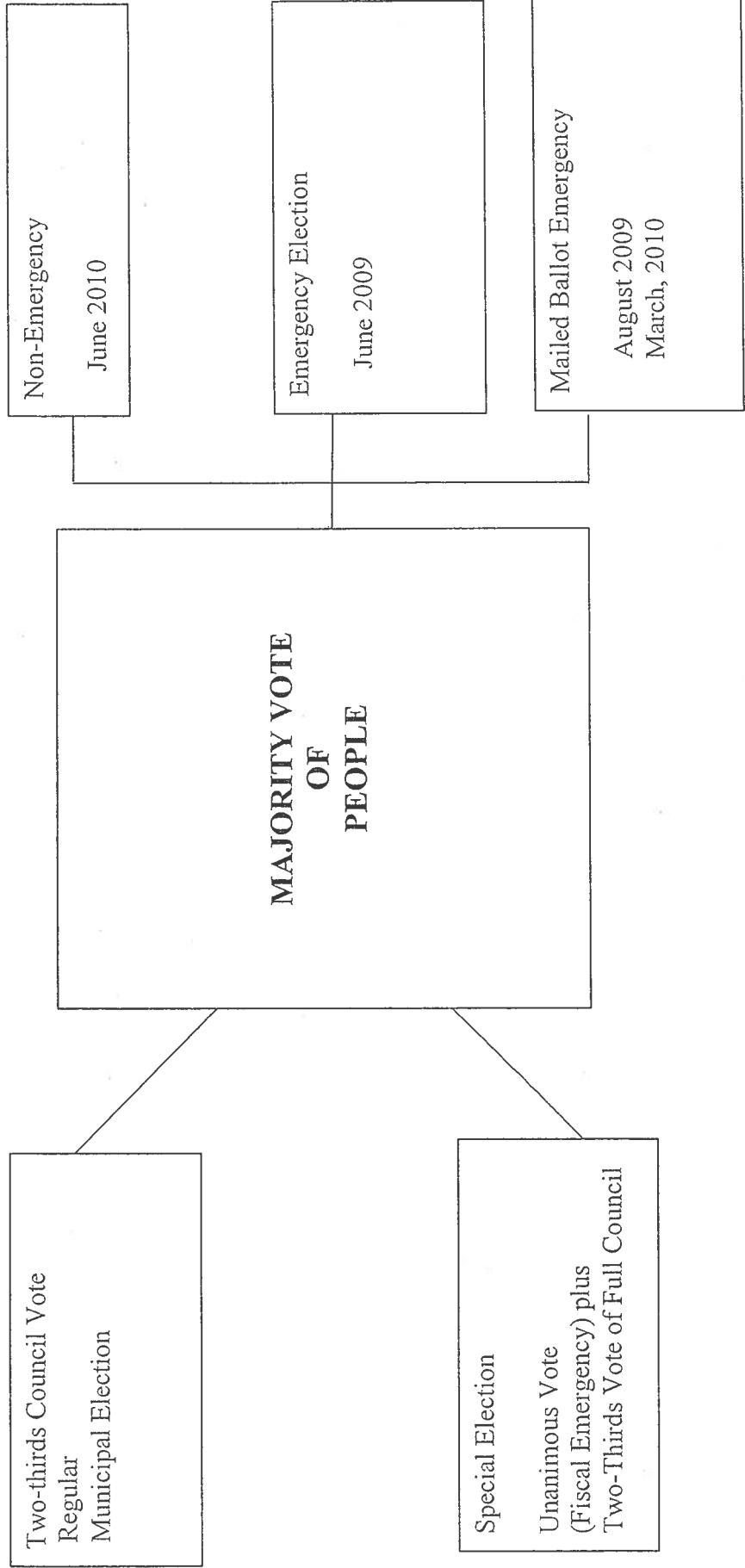
## CONCLUSION

The purpose of this memo is to provide some guidance regarding general tax procedures under the California Constitution and various election and revenue laws of the State of California. The attached Charts are meant to supplement this memo and include other revenue measures such as utility user taxes, parcel taxes and other business license taxes. These types of taxes generally follow the same procedural rules with some exceptions.

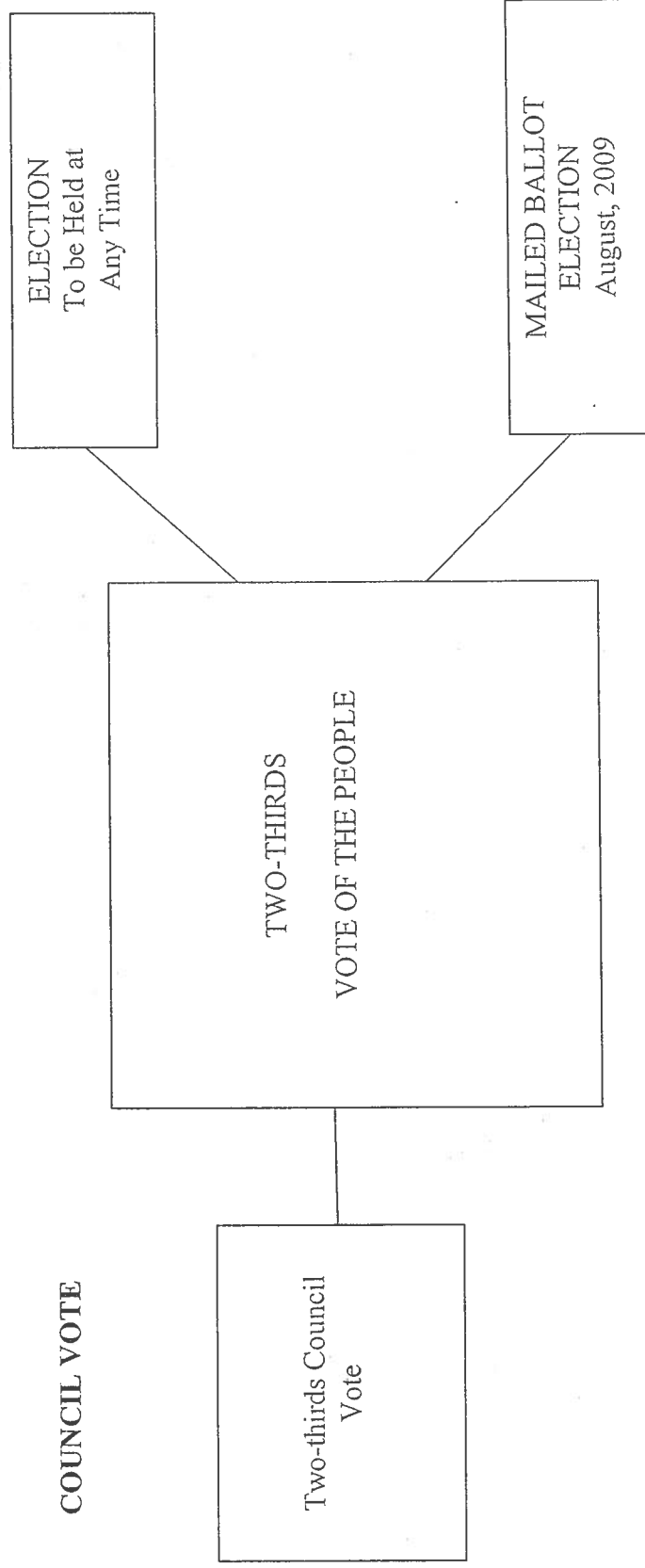
JPL:kld

Cc: Gary Brown, City Manager  
Tom Ritter, Assistant City Manager  
Michael McGrane, Finance Director

**GENERAL TAXES  
TRANSIENT OCCUPANCY TAXES,  
BUSINESS LICENSE TAXES,  
UTILITY USERS TAX or  
TRANSACTION AND USE TAX**

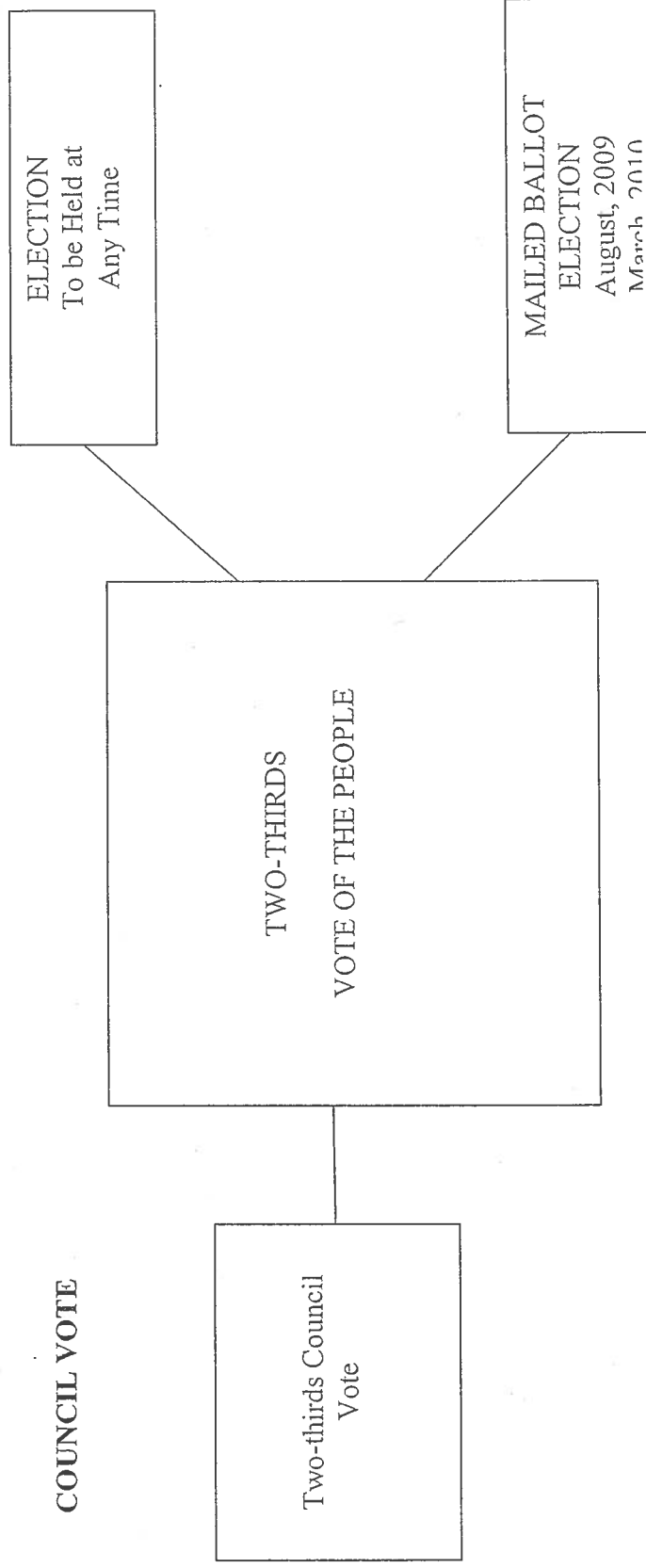


**SPECIAL TAXES  
PARCEL, UTILITY USERS, TRANSIENT OCCUPANCY  
AND BUSINESS LICENSE TAXES**



1. Taxes for any specified purpose
2. No emergency declaration
3. Parcel Tax considered a Special Tax

**SPECIAL PURPOSE TAXES  
PARCEL, UTILITY USERS, TRANSIENT OCCUPANCY  
AND BUSINESS LICENSE TAXES**



1. Taxes for any specified purpose
2. No emergency declaration
3. Parcel Tax considered a Special Tax